

U.S. Application Serial No. 09/504,135

R E M A R K S

The present amendment is in response to the Official Action dated December 5, 2003, wherein the Examiner rejected claims 1-48, in each instance relying upon one or more cited references in support of an anticipation rejection and/or an obviousness rejection including Hellebust et al., US Patent No. 6,628,194; Ichidawa et al., US Patent No. 4,626,842; Dorenbosch et al., US Patent No. 6,420,960; Wagner et al., US Patent No. 6,169,911; Lizzi, US Patent No. 6,629,772; and Oliwa et al., US Patent No. 4,868,560. The Examiner further objected to claims 28 and 37 under 35 USC §112 for an informality including the failure to provide a sufficient antecedent basis for each of the limitations in the claims.

In response to at least one of the cited references, Hellebust et al., '194, the applicants attest to the fact that the present invention was conceived of prior to the filing of the reference. It is further alleged, that at least for the period prior to the filing of the cited reference and the filing of the present application reduction to practice at least partially in the form of pursuit of the preparation and filing of the present application was pursued diligently. In support of the applicants' swearing behind of the reference, a declaration under 37 CFR §1.131, has been executed by each of the inventors, and copies of which have been enclosed. Additionally enclosed is a redacted copy of the disclosure document, which describes the present invention, and which was submitted to the patent committee of Motorola, as part of the process of preparing and filing a patent application. All of the specific dates associated with the disclosure document have been redacted along with the inventors' employee numbers and social security numbers. However, the inventors attest in the declaration to the fact that the redacted dates confirm the pre-existence of the disclosure document prior to the filing date of the cited reference Hellebust et al., '194. In view of the applicants swearing behind the reference, reliance upon the reference, Hellebust et al., '194, in support of any rejection of the claims in the present application would be inappropriate. Consequently any of the rejections, which rely at least in part upon Hellebust et al., '194, are now believed to be moot.

The remaining claims for which rejections were raised that did not rely upon Hellebust et al., '194, of which claims 26, 35, 42 and 44 have been amended, are allowable for the following reasons. As amended, the independent claims incorporate further limitations associated with message type. More specifically, claim 26 incorporates the further limitations of claims 27;

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claim 35 incorporates the further limitations associated with claim 36; and claim 42 incorporates the further limitations associated with claim 43. In conjunction with amending the claims, the objection associated with an insufficient antecedent basis is believed to be similarly addressed.

As presently amended claim 26 incorporates the further limitations of claim 27, for which the rejection articulated by the Examiner similarly relied upon Hellebust et al., '194, and therefore is believed to be no longer appropriate.

While the other two of the three dependent claims, namely claims 36 and 43, which were incorporated into independent claims 35 and 42, were rejected by the Examiner, in a manner which did not rely upon Hellebust et al., '194, the applicant hereby assert that the corresponding rejections were inappropriately applied to the corresponding claims, in so far as the Examiner attempted to assert that the determination of message size could additionally be associated with a determination of message type. However such an application to claims 36 and 43, which now form a part of claims 35 and 42 is inappropriate, in so far as in the corresponding claims message size is not used in the same manner as message type. It is specifically noted, that with respect to claims 35 and 42, size is not a criteria, which is used to determine whether the third routine is executed, but alternatively effects how the third routine is executed, when executed.

Alternatively, a determination of type, as provided by previously dependent claims 36 and 43, and presently amended claims 35 and 42, use type to determine whether the third routine is executed. Therefore it would be inappropriate to equate message size with message type, as the claimed effect, at least in claims 35 and 42, on the third routine are not equivalent. Consequently, the Examiner's attempt to equate the alleged determination of message size as having the claimed effect of message type is misplaced. The applicants' would respectfully request that the Examiner reconsider the rejection of the corresponding claims, as well as the claims that depend therefrom.

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In view of the present amendments and corresponding comments, the applicant would respectfully request that the Examiner reconsider the rejection of the claims. Should any issues remain unresolved after the consideration of the present response, the Examiner is requested to contact the applicant's representative at the number listed below to discuss the same.

Respectfully submitted,

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